EXHIBIT B-3
(2 PAGES)

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administratio

7500 SECURITY BOULEVARD
BALTIMORE MD 21244-1850

APR 29 1998

Nancy J. Auer, MD, FACEP
President
American College of Emergency Physicians
1111 19th Street, N.W. Suite 650
Washington, D.C. 20036-3603

Dear Dr. Auer:

Sally Richardson asked me to respond to your letter of March 10, 1998 regarding the emergency services provisions of the Balance Budget Act of 1997 (BBA). We at HCFA agree with you that these new provisions will protect Medicaid and Medicare beneficiaries who seek emergency care as well has hospitals and physicians who provide the care.

The letter to State Medicaid Directors dated February 20, 1998 provided our initial guidance to States regarding these provisions. As stated in that letter, emergency services do not require prior authorization, either by a managed care organization or a primary care case manager, in order to be covered. Coverage applies whether or not the entity has a contractual relationship with the emergency care provider. Managed care organizations are responsible for payment of these services as long as the prudent layperson standard is met, even if it is determined upon medical examination that the condition did not require emergency treatment.

As you know, these provisions became effective with contracts entered into or renewed on or after October 1, 1997. In addition to the letter to State Medicaid directors providing initial guidance, we will codify these requirements in regulations. States will be required to include these requirements in their contracts with managed care entities. The prohibition on requiring prior authorization applies to primary care case management contracts as well as those with managed care organizations.

You suggest that Medicaid managed care plans should not be permitted to develop lists of symptoms and conditions to use in determining if an emergency medical condition existed. Our letter to State Medicaid directors stated that coverage decisions must be based on the severity of symptoms at the time of presentation. We agree that a denial of coverage should not be made without considering both the symptoms and the reasonableness of the patient's response to them. Therefore, a determination to deny coverage must be made on an individual case basis.

You also ask about the applicability of these provisions to States with waivers under sections 1115 or 1915(b) of the Social Security Act. States with approved 1115 and 1915(b) waivers must comply with the prudent layperson standard beginning with contracts entered into or renewed on or after October 1, 1997. While the BBA provides a limited exemption from new

BBA managed care requirements for waived provisions, these provisions must be specifically addressed in the waiver documents approved by HCFA. Since States with section 1915(b) or section 1115 waivers did not previously apply the prudent layperson concept to their definition of an emergency medical condition, this provision would have to be implemented with respect to all contracts entered into or renewed on or after October 1, 1997. Plans which do not adhere to this policy may be subject to sanctions imposed by the State or HCFA for failure to provide medically necessary items and services as provided by law. Beneficiaries who believe they are denied coverage improperly may appeal through the plan's appeal process or directly to the State.

We believe that States will implement these new provisions as required by law. If there is an instance in which you believe that this requirement is not being enforced, the HCFA Regional Office with responsibility for the State of the occurrence should be contacted. The Regional Office Medicaid contacts are available on the HCFA home page and can be accessed at hcfa.gov/medicaid/rcontact/htm.

Thank you for writing to express your concern. We welcome your comments on the Notice of Proposed Rulemaking for these provisions which will be published this summer.

Sincerely,

Patricia MacTaggart

Patricia MacTaggart
Director
Quality Performance Management Group